

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

CAROLYN ZANONI,

Plaintiff,

v.

NORTHERN NEVADA HOPES CLINIC,  
CLAIRESE ROBERTS,

Defendants.

Case No.: 3:19-cv-00548-MMD-WGC

**Report & Recommendation of  
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1), and a document which the court construes as her pro se (without legal counsel) complaint (ECF No. 1-1).

**I. IFP APPLICATION**

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: “Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The

1 application must be made on the form provided by the court and must include a financial affidavit  
2 disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

3 "[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some  
4 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)  
5 (quotation marks and citation omitted). A litigant need not "be absolutely destitute to enjoy the  
6 benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee;  
8 therefore, the application should be granted.

## 9 **II. SCREENING**

### 10 **A. Standard**

11 "[T]he court shall dismiss the case at any time if the court determines that-- (A) the  
12 allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails  
13 to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant  
14 who is immune from such relief." 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

15 Dismissal of a complaint for failure to state a claim upon which relief may be granted is  
16 provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks  
17 that language. As such, when reviewing the adequacy of a complaint under this statute, the court  
18 applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d  
19 1108, 1112 (9th Cir. 2012) ("The standard for determining whether a plaintiff has failed to state a  
20 claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule  
21 of Civil Procedure 12(b)(6) standard for failure to state a claim."). Review under Rule 12(b)(6) is  
22 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723  
23 (9th Cir. 2000) (citation omitted).

1 The court must accept as true the allegations, construe the pleadings in the light most  
 2 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. *Jenkins v. McKeithen*, 395  
 3 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are "held to less stringent  
 4 standards than formal pleadings drafted by lawyers[.]" *Hughes v. Rowe*, 449 U.S. 5, 9 (1980)  
 5 (internal quotation marks and citation omitted).

6 A complaint must contain more than a "formulaic recitation of the elements of a cause of  
 7 action," it must contain factual allegations sufficient to "raise a right to relief above the speculative  
 8 level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "The pleading must contain  
 9 something more ... than ... a statement of facts that merely creates a suspicion [of] a legally  
 10 cognizable right of action." *Id.* (citation and quotation marks omitted). At a minimum, a plaintiff  
 11 should include "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570; *see*  
 12 *also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

13 A dismissal should not be without leave to amend unless it is clear from the face of the  
 14 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
 15 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
 16 1103, 1106 (9th Cir. 1995); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

## 17 **B. Plaintiff's Complaint**

18 Plaintiff filed a one-page document along with her IFP application that states that she saw  
 19 Nurse Claressa Roberts at the Northern Nevada Hopes Clinic on October 5, 2016, about her hair  
 20 falling out. Roberts cut her Levothyroxine prescription and made a joke that if she went bald people  
 21 would think she had cancer and feel bad for her. Roberts ultimately told her to come back in two  
 22 weeks if her hair continued to fall out. Plaintiff was upset, and went to Saint Mary's Urgent Care  
 23

1 and then saw another provider at the Northern Nevada Hopes Clinic, and then a dermatologist.  
2 (ECF No. 1-1.)

3 To bring a lawsuit in federal court, there must be a basis for federal court jurisdiction.  
4 Federal courts are courts of limited jurisdiction, which means they can only hear cases authorized  
5 by the United States Constitution or federal statutes. Typically, this means that there is either  
6 original jurisdiction, where the case arises from the Constitution of the United States, or a federal  
7 statute or treaty, or, there is diversity jurisdiction, which allows a plaintiff from one state to sue a  
8 defendant from another state in federal court where the amount in controversy is more than  
9 \$75,000.

10 Here, Plaintiff's lawsuit does not appear to arise from the Constitution, federal statute or  
11 treaty. 42 U.S.C. § 1983 provides a mechanism for the private enforcement of substantive rights  
12 conferred by the Constitution and federal statutes. Section 1983 "is not itself a source of  
13 substantive rights, but merely provides a method for vindicating federal rights elsewhere  
14 conferred." *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (internal quotation marks and citation  
15 omitted). To state a claim under section 1983, a plaintiff must allege: (1) his or her civil rights  
16 were violated, (2) by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48-  
17 49 (1988). Nurse Roberts and Northern Nevada Hopes Clinic are not persons acting under color  
18 of state law for purposes of section 1983.

19 In addition, Plaintiff provides a Reno, Nevada address, and alleges she was seen by Roberts  
20 at the *Northern Nevada Hopes Clinic*, which is also in Reno, Nevada; therefore, there is no basis  
21 for diversity jurisdiction.

22 Therefore, it is recommended that this action be dismissed with prejudice.  
23

**III. RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the District Judge enter an order:

(1) **GRANTING** Plaintiff's IFP application (ECF No. 1). Plaintiff is permitted to maintain this action without prepaying the filing fee or giving security therefor. This order granting IFP status does not extend to the issuance of subpoenas at government expense.

(2) The complaint (ECF No. 1-1) should be **FILED**.

(3) The action should be **DISMISSED WITH PREJUDICE**.

The Plaintiff should be aware of the following:

1. That she may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

Dated: December 12, 2019.



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William G. Cobb  
United States Magistrate Judge